In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 19408 of 2001

Date of Decision: 7.7.2006

Smt. Daljit Kaur

…Petitioner

Versus

Union of India and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Ashok Sharma Nabhewala, Advocate,
for the petitioner.

Mr. Anil Rathee, Addl. Central Govt. Standing Counsel.
for the respondents.

JUDGMENT

The husband of the petitioner was enrolled in the Indian Army on 5.3.1971. He died at a young age on 6.11.1974. The petitioner who is the widow was granted family pension. However, the pension was stopped with effect from 1.6.1975 on the ground that the death of her husband was neither attributable to nor aggravated by his military service (P-1). The petitioner was held entitled to and given ordinary family pension. She represented for the release of family pension on 2.7.1975 (P-2). On 10.1.1976, the petitioner being young widow remarried Shri Bhupinder Singh, younger brother of her late husband. A copy of the marriage certificate, dated 20.6.1976 has been placed on record as Annexure P-3. The required declaration form was also filled by her and submitted to the respondent

authorities. It was declared that her husband had died and she has been living in commune with, and is contributing towards the support of the eligible heirs of the family of the deceased. On account of her re-marriage, the family pension granted to her was discontinued. On 14.12.1976, the petitioner made a representation for continued payment of family pension (P-5). A number of reminders from 1977 to 1990 were sent. Eventually, her case was taken by the Indian Ex-Services League Punjab on 16.1.1990 (P-6). On 22.10.1992, the respondent finally rejected her prayer for continuation of family pension. She has, thus, file the instant petition.

The respondents have taken the stand that deductions were made while making the payment from 7.11.1974 to 31.5.1975. The petitioner was advised to file an appeal, vide order dated 20.5.1975 (R-2). According to the respondents, the claim of the petitioner for Special Family Pension was rejected for the reason that the death of the husband of the petitioner was not attributable to nor aggravated by military service. The decision was communicated to her with the information that she may appeal against the decision within a period of six months, which was not done. It has also been claimed that the petitioner was not eligible for family pension after her re-marriage with the real brother of her deceased husband as she has been granted ordinary family pension under Special Army Instructions 2/S/64, vide order no. F/NA/910/75, dated 7.8.1975. The aforementioned stand is stated to have been conveyed to the petitioner on 3.2.1977 (R-3).

Mr. Ashok Sharma Nabhewala, learned counsel for the petitioner has argued that the Pension Regulations for the Army, 1961 (for brevity, 'the Regulations') provide for grant of family pension. He has placed reliance on Regulations 216 and 219, which were subject matter of consideration before a Division Bench of this Court in the case of **Kamaljit Kaur v. Union of India, 1998 (1) SCT 312** and a Single Bench judgment of this Court in the case of **Union of India v. Smt. Chawli Devi** (R.S.A. No. 4249 of 2004, decided on 12.7.2005). According to the learned counsel, the case of the petitioner is squarely covered by the aforementioned two judgments because the proviso to Regulation 219 clearly envisages that various provisions specified in Regulation 219 were not to apply to a widow who has remarried her deceased husband's brother and who has continued to live a communal life with and/or contributes to the support of other living eligible heirs of her deceased husband. Learned counsel has also submitted that the petitioner would be entitled to the benefit of Regulation 213, which provide for awarding Special Family Pension as the husband of the petitioner had died while he was in active military service.

Mr. Anil Rathee, learned counsel for the respondents, however, has referred to Regulation 212, which deals with ordinary family pension and it further refers to instructions A1-51 of 1980. He places reliance on Clause 7 of the instructions to argue that such a pension is admissible to the petitioner but no special pension under Regulation 213 read with 216 and 219 would be admissible.

According to the learned counsel, the Division Bench in Kamaljit Kaur's case (supra) or the Single Bench in Smt. Chawli Devi's case (supra) have failed to consider the aforementioned provision. Learned counsel has maintained that the judgments of the Division Bench and that of the Single Bench are per incuriam.

It has further been submitted that the petitioner was granted family pension till death or till the date she got remarried. In that regard reliance has been placed on para 5 of the order dated 7.3.2001 (R-6) wherein reference has been made to the Special Army Instructions SAI 2/S/64, which are to the effect that the pension was to admissible to widow up to the date of death or remarriage whichever is earlier. It has been asserted that though the petitioner had married with the real brother of deceased soldier, she was not entitled to family pension as per letter dated 27.4.2000 of the Government of India, Ministry of Defence, and a Circular No. 259, dated 24.5.2000, issued by the PCDA (P) Allahabad.

Having heard learned counsel at some length, I am of the considered view that this petition deserves to be allowed. The view taken by the Division Bench in Kamaljit Kaur's case (supra) has been rightly relied upon in Smt. Chawli Devi's case (supra). There is nothing in the rules dealing with the family pension, which may overcome the proviso attached to Regulation 219 which is in the form of an exception, namely, that if a widow remarry with the deceased husband's brother and continues to live with him in commune and/or contribute to support other living heirs then she would be entitled to

the grant of family pension. It appears that the case of the petitioner is covered by the aforementioned two judgments of this Court. When a person dies in uniform either while actually engaged in action or activities related to military service then he must be regarded to have died on account of injuries suffered by him attributable to military service. It has been held by a Division Bench of this Court in the case of **Jarnail Singh v. Union of India, 1997(3) SCT 484** that a remote connection between the cause of death and the military service should be regarded as sufficient to conclude that the death was attributable to military service. The Division Bench in Jarnail Singh's case (supra) has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Union of India v. Baljit Singh, 1997 (1) SLR 98**, and held that an accident or injury suffered by the member of the armed forces must have some casual connection to the aggravation or attributability to military service and concluded its view in paras 18, 19 and 20, which reads as under:-

> "18. On proper analysis of the above discussion the position that emerges is that an accident or injury suffered by a member of the Armed forces must have some casual connection to the aggravation or attributability to military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force. The nexus between the two is not apparently one so as to cover every injury or accident.

The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. The fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service and the matters entirely alien to such service. What falls *ex-facie* in the domain of an entirely private act which may even extend to the sphere of undesirable and unlawful activity of such member, cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service and expected standards of behaviour and living of the member of the force appears to be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

19. We may elucidate the above principle by giving a very simple example that if a person on casual

leave and subject to this act goes to canteen to buy things or takes his children for treatment to hospital and on the way meets with an accident, may be arising out of his negligence or contributory negligence, suffers injuries causing permanent disability, in our view, would be entitled to claim the benefit under Rule 173. Similarly a person who joins Army is not found to be suffering from any disease, but subsequently suffers from a disease which renders him liable for being invalidated out of Army on such ill-health, such a disease would be attributable and/or aggravated by military service and would entitle him to take benefit of these regulations.

20. Thus, to sustain a claim of disability pension, the member of the Armed force must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from member of such disciplined force. It is so primarily for the reason that no unlawful activity or commission can validly by support a lawful claim. Violation of expected standards can not form a fair ground for raising a claim under these provisions. Every rule is expected to be understood so as to be implemented lawfully and to achieve its object, but equally true is that no lawful activity can be brought to

> the aid of an unlawful act and that too by stretching the rules of present kind because it may ultimately result in abuse of the benefit sought to be granted by such rule. It has to be understood that no strait-jacket formula could be provided for such cases and each case has to be judged on its own merits. We have attempted to provide certain guiding principles which could help the authorities concerned while deciding such a claim."

It is, thus, obvious that within these jurisdiction, the claim of the petitioner could not have been rejected on the ground that the death suffered by the husband of the petitioner was not attributable to military service. Therefore, the petitioner, who is a widow, has to be granted benefit of family pension. Moreover, she had already been granted family pension, which was sought to be withdrawn by the respondents.

In view of the above, the writ petition succeeds. The order dated 26.7.2001 (P-13) and all other orders contrary to the rights of the petitioner, as held above, are quashed. The respondents are directed to restore the pension of the petitioner from the date of her entitlement till date. The petitioner is also held entitled to interest @ 6% per annum. I am deliberately not confining the relief to 38 months in respect of the pension as the petitioner is an illiterate widow and in accordance with law laid down by Hon'ble the Supreme Court in the case of **S.K. Mastan Bee v. General Manager, South Central Railway, (2003) 1 SCC 183**, which postulate the

payment of all arrears from the date they became due. The respondents shall calculate the arrears along with interest and pay the same to the petitioner within a period of two months from the date a certified copy of this order is received by them. If the arrears are not paid within the aforementioned period then the petitioner shall become entitled to interest @ 9%. It is further directed that the respondents shall keep paying family pension to the petitioner for life unless contrary is shown that she has discontinued living in commune with the family members of her deceased husband as per the affidavit filed by the petitioner. The petitioner is also held entitled to costs, which are quantified at Rs. 2,000/-.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)

July 7, 2006
JUDGE

Pkapoor

FIT FOR INDEXING